

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON LOCAL GOVERNMENT**

**Call to Order:** By **CHAIRMAN MARK NOENNIG**, on January 28, 2003 at 3:00 P.M., in Room 303 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Rep. Mark Noennig, Chairman (R)  
Rep. Eileen J. Carney, Vice Chairman (D)  
Rep. Scott Mendenhall, Vice Chairman (R)  
Rep. Arlene Becker (D)  
Rep. Rod Bitney (R)  
Rep. Larry Cyr (D)  
Rep. Ronald Devlin (R)  
Rep. Gary Forrester (D)  
Rep. Ray Hawk (R)  
Rep. Hal Jacobson (D)  
Rep. Jesse Laslovich (D)  
Rep. Bob Lawson (R)  
Rep. Rick Maedje (R)  
Rep. Penny Morgan (R)  
Rep. Alan Olson (R)  
Rep. Holly Raser (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Connie Erickson, Legislative Branch  
Linda Keim, Committee Secretary

##### **Please Note:**

These are summary minutes. Testimony and discussion are paraphrased and condensed.

The time stamp for these minutes appears at the beginning of the content it refers to.

##### **Committee Business Summary:**

Hearing & Date Posted: HB 249, HB 258, 1/20/2003  
Executive Action: None

**HEARING ON HB 249**

***{Tape: 1; Side: A; Approx. Time Counter: 0 - 14.9}***

**Sponsor:** REP. DEBBY BARRETT, HD 34, DILLON

**Opening Statement by Sponsor:**

**REP. BARRETT** said that she has been working with Montana Association of Counties (MACO) regarding the problems caused by city dwelling wildlife and HB 249 is the result of that effort. REP. BARRETT said that wildlife residing in cities pose a threat to public health and safety, and need to be dealt with by the Legislature and the Department of Fish, Wildlife and Parks (FWP). There were 130,000 fewer hunters in Montana between the years of 1994 and 2000, yet FWP has allowed game populations to increase.

FWP was created 102 years ago to restore and supervise all wildlife in Montana. Current supervision of game species is almost non-existent and some game species are out of control. In many areas, populations are tripling the agency's objectives, and some game species are located in areas where they never existed before. Sportsman dollars have been spent to acquire land for wildlife habitat and hunting access since 1940. An inventory of land under FWP jurisdiction and owned by FWP was submitted.

**EXHIBIT (loh18a01)**

HB 249 amends Title Seven, which deals with the nature of self government and local government; and Title 87, which deals with FWP. She said that she does not agree with the cost in the Fiscal Note, and that she did not sign it.

**Proponents' Testimony:**

***{Tape: 1; Side: A; Approx. Time Counter: 16 - 21.3}***

**Alec Hansen, Montana League of Cities and Towns**, said that this is a serious problem and causes damage to people's gardens, as well as being a traffic hazard. He said that the town of Fort Benton is dealing with their problem by conducting a special hunt.

**Donna Sevalsted, Beaverhead County Commissioner, Dillon**, said that they support the sustainable management of wildlife in both cities and rural areas and urged support of HB 249.

**Rick Morris, Mayor of Fort Benton, and small businessman**, said that no problems with urban deer existed 15 years ago, but they now have over 300 deer. He said that the drought may have had an

impact, and that Fort Benton's location on the Missouri River provides a reliable source of water for the animals. He said that deer cause problems to resident's shrubs and fruit trees, and there have been incidents of direct contact with deer that get caught inside the chainlink fence on the school playground. HB 249 gives local governments the ability to work with FWP to take care of these problem animals. He is concerned that infectious diseases from neighboring states are starting to spread into deer herds, and will soon be in Montana. Mr. Morris said that there could be a serious problem with close contact between humans and diseased deer.

**Elaine Mann, Broadwater County Commissioner**, said that she agreed with all of the above testimony.

***{Tape: 1; Side: A; Approx. Time Counter: 21.5 - 26.4}***

**Tim Burton, Mayor of Helena, Montana**, said that the City and FWP meet together every time there is an issue, but the deer problem is still there. Mayor Burton said that Helena has deer, grizzly bears, elk, moose, and mountain lions. He said that it is a health and safety issue. Deer jump off parking structures, crash through sliding glass doors, and bring mountain lions into town. He said that the authority to manage wildlife rests with FWP, and that local government can only assist by providing animal control officers and an occasional police officer. Mayor Burton said that the urban deer issue is escalating and needs to be managed by FWP.

**Mike Kadas, Mayor of Missoula, Montana**, echoed Mayor Burton's comments and added that local governments are statutorily excluded from dealing with the problem. He asked that if FWP could not be authorized to deal with the issue, to at least give local government the tools. He added that automobile conflict issues are great, and that there are many roadkill that have to be removed. He stated that in Missoula there was a mountain lion in someone's basement.

**Harold Blattie, Montana Association of Counties (MACO)**, said that this is a natural resource issue, as well as a local government issue. He stated that in times of drought, a good ranch manager reduces his herd because the grass supply is diminished; however FWP has not properly managed the herd they are responsible for, and that is what is causing this problem.

**Opponents' Testimony:**

***{Tape: 1; Side: A; Approx. Time Counter: 26.7 - 30} AND***

***{Tape: 1; Side: B; Approx. Time Counter: 0 - 0.6}***

**Larry Copenhaver, Montana Wildlife Federation, Helena**, said that they oppose HB 249. He provided written testimony, which he read to the committee, and added that he did not feel that hunters should bear the total burden.

**EXHIBIT (loh18a02)**

**Informational Testimony:**

***{Tape: 1; Side: B; Approx. Time Counter: 2.6 - 6.9}***

**Larry Peterman, Chief of Field Operations, Fish, Wildlife and Parks**, read written testimony which he provided for the record, and included a copy of Montana Statute 87-1-225.

**EXHIBIT (loh18a03)**

**Questions from Committee Members and Responses:**

***{Tape: 1; Side: B; Approx. Time Counter: 7.2 - 8.9}***

**REP. LASLOVICH** asked why local governments have not been allowed to deal with the urban wildlife problem. **Larry Peterman** said that they have tried to work with local communities to try to solve the problem. He commented that traditional tools, such as hunting and trapping, are not appropriate within the city limits. Mr. Peterman added that it is very difficult to deal with the removal of large numbers of animals in an urban environment.

**REP. LASLOVICH** asked **REP. BARRETT** if it is possible to do this, after listening to the Department, seeing the Fiscal Note, and determining the amount of revenue it will require. **REP. BARRETT** said that she does think that it can be done. She said that she attended a FWP meeting for Legislators prior to the Session, and heard everyone talking about the problem. She said that talking is a step in the right direction, and that they are very close to getting the wildlife problem solved.

***{Tape: 1; Side: B; Approx. Time Counter: 12.0 - 17.1}***

**REP. ALAN OLSON** asked how much money is currently designated for acquisition of wildlife habitat. **Larry Peterman** said that it is \$400,000 annually. **REP. OLSON** asked where the wildlife habitat land was being purchased. **Larry Peterman** said that acquisition through the Habitat Montana Program occurs statewide in rural areas, in the form of conservation easements. **REP. OLSON** asked if that land would be wildlife habitat without the conservation easement. **Larry Peterman** said that it would still be wildlife habitat, but that there would be a question about the quality of the habitat. He added that most easements have restrictions on

subdivision and development, but the landowner can still use the land for ranching. **REP. OLSON** said: "If the cities have become wildlife habitat, wouldn't that fall under FWP and be something to pay for out of FWP funds." **Larry Peterman** said that the funds currently used for wildlife issues in urban areas are not the habitat funds. They use their General License Account for those activities. **REP. OLSON** pointed out that the proposed funding source for this bill is currently earmarked for the acquisition of wildlife. He asked: "If the wildlife is coming into the city, wouldn't that also fall under a problem that you need to address?" **Larry Peterman** said that in his testimony that he was trying to indicate that the habitat acquisition account was earmarked for the acquisition of habitat, and has certain parameters and restrictions that cover what the funding can be used for. He said that the Department uses other funding sources to deal with urban wildlife and wildlife conflict issues. **REP. OLSON** stated: "If there is a problem in communities with wildlife, wouldn't the public interest be better served by taking care of the urban wildlife before you expend money on easements or land purchases?" **Larry Peterman** said that those are two significant issues that they try to deal with at the same time. **REP. OLSON** asked: "Which would be higher on FWP's priority list; taking care of the wildlife urban interface type problems, or habitat acquisition?" **Larry Peterman** said that they have five wildlife conflict specialists, and that they would respond to situations with hazardous animal encounters first. They also call in their biologists and wardens in those situations.

**{Tape: 1; Side: B; Approx. Time Counter: 17.1 - 25.4}**

**REP. JACOBSON** noted that in previous testimony FWP has a control policy currently in place: "The use through relocation or lethal means to deal with those animals that pose a potential health or safety problem to humans." He then asked what is happening in Helena that will deal with the urban wildlife problem, using current methods. **Larry Peterman** said that problem has been the topic of discussion between their Helena area office and the City of Helena. They have coordinated handling either hazardous situations or roadkill problems between city police, the county, and the Department, but no solution for substantially reducing the number of deer has been found. **REP. JACOBSON** asked about the use of trapping nets, or shooting tranquilizers into problem animals. **Larry Peterman** said that nets or traps have been discussed. He said that in relocating the animal, that they have to consider community acceptance of the practice, and whether they are just moving the problem to a different area. FWP has run into situations where they try to do control actions, and find that not everyone wants the deer removed.

**REP. RASER** asked how much was in the Special Revenue Fund. **Larry Peterman** said that he would supply that information later. **REP. RASER** asked if another source of funding for wildlife habitat was available. **Larry Peterman** said that the Habitat Fund is an earmarked account. The funding that they use for a lot of other situations, which urban wildlife and wildlife conflict situations fall under, is their FWP's General License Revenue Account, which is funded by revenue received from the sale of hunting and fishing licenses. **REP. RASER** asked what the difference was between the amounts listed in the bill and .... (tape inaudible) for conservation easements. **Larry Peterman** said the Fiscal Note did not identify a funding source, it just estimated how much it would cost if half the state's municipalities did not want urban wildlife. He said that the bill does identify funding sources, and that they are the General License Revenue or Federal Special Revenue Accounts. Hunting and fishing licenses also fund FWP's General Operations Fund, which includes wildlife damage and wildlife conflict situations. **REP. RASER** asked about the current \$400,000 expenditure: "If we used this amount for wildlife removal, what would happen to the wildlife habitat acquisition fund." **Larry Peterman** answered that in a worst case scenario, it would deplete the fund over a number of years.

*{Tape: 1; Side: B; Approx. Time Counter: 25.4 - 27.8}*

**REP. MORGAN** asked **REP. BARRETT**: "Assuming the money was available, how did they propose to deal with this issue?" **REP. BARRETT** said that there are Statutes that give FWP authority and tools to use when there is damage. (She distributed a copy of the Montana Statute after her closing remarks, Exhibit 4.) **REP. BARRETT** explained that this bill also gives FWP the ability to make new rules. If FWP were organized to work in a neighborhood, certain numbers of deer could be rounded up and hauled out, at a cost that is similar to using helicopters and five people in vehicles to capture one moose. **REP. MORGAN** asked about euthanizing, and what the specific plan would be. **REP. BARRETT** said that FWP already can euthanize. When there is damage on private property, FWP personnel must show up within 48 hours and assess the damage. FWP can issue kill permits or kill the wildlife themselves. She said that FWP usually disperses the wildlife, which does not address the problem.

**REP. CARNEY** followed up on Mr. Copenhaver's testimony that it is often the inappropriate actions of city residents that attract the animals. She asked Harold Blattie: "Should the cities be responsible for at least part of the cost for the removal of animals?"

*{Tape: 2; Side: A; Approx. Time Counter: 0.0 - 5.1}*

**Harold Blattie** redirected the question to **Mayor Kadas**, who said that he would disagree that it is usually city residents that cause the problem. He said the deer come down because they are hungry. He said that cities do have to bear some of the burden in trying to deal with the urban wildlife problem. He said they were unable to get authority from the Legislature four years ago to allow them to create hunts in particular areas in conjunction with FWP. It is a politically difficult situation because not everyone wants to get rid of the deer. He said that the local government should be empowered to try to deal with it, rather than to say it is not a problem from the state level.

**REP. MENDENHALL** asked if there was an estimated cost of shrubbery or vehicle damage, etc. as a result of wildlife damage within urban areas. **Alec Hansen** said that they do not have any estimates. He said that he will try to get some reliable information and bring it back to the Committee. **REP. MENDENHALL** referred to the idea in previous testimony that cities should be responsible for part of the cost. If that is enacted, wouldn't this legislation result in expenditure of city funds in order to comply with this act. **Alec Hansen** said that he agreed with Mayor Kadas, that there would probably be some cost to the cities. He said that there is no way to deal with the problem at the present time, and that they are looking for a way to work with FWP in dealing with the urban deer population. Mr. Hansen said that because of the way the laws are written, that the way this is dealt with, and where the costs fall will be decided later.

*{Tape: 2; Side: A; Approx. Time Counter: 5.2 - 8.2}*

**CHAIRMAN NOENNIG** said that HB 249 says the city will have the ability to enact ordinances to restrict animals, that the money for animal removal would be from the Department, and that the rules would be developed and enforced by the Department. He said that he sensed that there isn't very good coordination of what the plan will be, or whether it is even possible. **Mayor Kadas** said that is how he understands it. The local government would identify the problem area and ask FWP how they would deal with it if Statutory authority were used. There would be discussion, and the solution would be taken to the local neighborhood for input. **CHAIRMAN NOENNIG** said that even after going through that process, local governments and FWP will have to work as a team, or it won't happen. **Mayor Kadas** said that if they weren't working together, there would be problems. He said that it is the city that controls when FWP comes in, and that they would want some guarantees ahead of time.

*{Tape: 2; Side: A; Approx. Time Counter: 8.2 - 16.5}*

**Closing by Sponsor:**

**REP. BARRETT** responded to Montana Wildlife Federation concerns and clarified that this bill does not deal with geese, only game animals. She asked: "If it is illegal to feed urban wildlife, how many fines have been issued? Enforcing the laws would be another way to help cities right now." **REP. BARRETT** referred to the Montana statute that deals with property damage by wild animals, and presented a copy to be entered into the record. She referred to Section (3) of Statute 87-1-225.

**EXHIBIT (loh18a04)**

**REP. BARRETT** said that she checked with the Code Commissioner when the law was drafted, and that the damage does not pertain to either rural or urban damage, it states "any land in the state."

**REP. BARRETT** followed up with comments on the Fiscal Note. She said that the Agency gave huge assumptions, but that only 16 cities have known problems. She said that she did not agree that FWP would need another full time employee and another vehicle.

She explained that sportsmen would fund this bill for three years. They have acquired large amounts of land which is under fee entitlement and jurisdiction. She said that she did not believe that would deplete the fund. If FWP has allowed Montana to be overpopulated by wildlife, that this is the Department that should address the damage.

FWP has spent the following amounts on wildlife damage issues from 1992 - 2002: Missoula \$9,000; Helena \$6,700; Billings \$15-\$20,000; and Fort Benton \$5,000. She answered **REP. RASER's** earlier question by saying that there is \$4 million in the Trust.

**REP. BARRETT** said that it appears that the Damage Statute has never been utilized fully, or we would not be overrun by urban wildlife. She asked the Committee to consider that Wisconsin also has an overpopulation of deer, as most states and Canadian provinces do. Last year in Wisconsin, 47,000 deer were killed in vehicle collisions. In Montana, vehicle-wildlife collisions have increased 22% in the past five years, and have killed 26 people. In Missoula last year, 248 deer were killed by cars within the city. She asked for a DO PASS on HB 249.

**HEARING ON HB 258**

***{Tape: 2; Side: A; Approx. Time Counter: 17.8 - 30}***

**Sponsor: REP. RICK MAEDJE, HD 81, LINCOLN COUNTY**



**Opening Statement by Sponsor:**

**REP. MAEDJE** said that HB 258 brings together the competing interests and beliefs concerning smoking ordinances by creating a uniform framework upon which local government, private property owners, and the public can rely while serving the interest of public health. He said that the legislature is the one to provide guidance for local governments, as they have in the past when things got out of hand in other situations. He said that he will present three amendments in Executive Action: 1) Clarify a qualified Cessation Program in the bill, 2) Eliminate the ventilation system requirement, 3) Exempt taverns and bars so that local governments would have to follow the Clean Indoor Air Act in the Statute.

**REP. MAEDJE** said that this is a bill to save lives. 1) It focuses attention on getting people off cigarettes, instead of beating up on private property rights. It would put money into a Cessation Program, where an individual wanting to quit smoking would apply to attend a certified program, with reimbursement of one-half for enrollment, and reimbursement of the other half after completion of the program. 2) HB 258 creates a uniform guideline to regulate smoking according to local concerns. It protects local governments from getting carried away with ordinances that put them into unnecessary litigation, which does not get people off cigarettes. 3) HB 258 protects kids. The unintended consequence of a smoking ban is to create health problems in homes, because then the smokers smoke more at home.

**Proponents' Testimony:**

***{Tape: 2; Side: B; Approx. Time Counter: 0.0 - 6.0}***

**Bob Pavlovich, Citizen from Butte, Montana,** said that if his tavern had an ordinance like the one in Helena, that it would put him out of business. He said that he had no problem with people not smoking in public buildings or restaurants, but each business should be able to decide whether they want smoking in their establishment, they should not be told how to run their business.

**William Holmes, Citizen from Helena, Montana,** said that he is a non-smoker, and believes the Helena Ordinance is wrong because it allows people not in the tavern and restaurant business to tell business owners how to market their product. This is an economic issue and a privacy issue. The right to have clean air should not be at the expense of a bar owner or a tavern owner. Taverns and bars are losing money, and the state, counties and cities will also lose money if this ordinance is allowed to stand.

**Mike Collins, Citizen from Helena, Montana,** said that he is a reformed smoker. He said that he chose to start smoking, and that he also chose to stop. Under Article Two, Section Three of the Constitution, we are all afforded protection of certain rights of free choice. He said that he opposed HB 258.

***{Tape: 2; Side: B; Approx. Time Counter: 6.1 - 11.7}***

**Dave O'Connell, Citizen from Helena, Montana,** read his written testimony opposing HB 258 and presented it for the record.

**EXHIBIT**(loh18a05)

***{Tape: 2; Side: B; Approx. Time Counter: 11.9 - 13.8}***

**Jerry Driscoll, representing the employees in the Hospitality Industry,** said that many employees were laid off and others have had their hours reduced, as a result of the Helena No Smoking Ordinance. Employees who rely on tips have lost a lot of revenue. Prior to this ordinance, there were five bars in Helena that, by owner choice, did not allow smoking, and, other than casinos, only two restaurants allowed smoking previously.

***{Tape: 2; Side: B; Approx. Time Counter: 13.9 - 17.5}***

**Ken Swain, Citizen,** said that the issue at hand is the freedom of businesses to pick and choose the public they want to serve. It is the freedom of an individual to enter an establishment that has behavior that they do, or do not agree with. The tax base issues, and the revenue shared by these taverns and casinos, leave their doors open as a freedom of choice. Only adults are allowed to go into casinos. We will give our young people an M16 to go Iraq, but we have a big issue about protecting our children in Helena. The 1979 Clean Air Act left the freedom of choice, and it should be left as it stands. It is a matter of survival, the economic impact of the Helena Ordinance has been to single out the lowest paid people on the scale. He asked for a DO PASS in order to save the jobs and the tips of the working class.

***{Tape: 2; Side: B; Approx. Time Counter: 17.5 - 21.3}***

**Bob Utick, Bar Owner, Helena** said that he also supports clean air. He said that HB 258 clarifies what the Legislature intended when they passed the Clean Air Ordinance.

**Randy Reger, Helena,** said that he supports HB 258. Mr. Reger said that he has a business where his customers smoke, but he does not. He said that it is unfortunate that the Helena No Smoking Ban did not exempt anyone except when in a motel room. When the 1979 Legislature had this same problem, they adopted the

Clean Air Act that said bars and restaurants must have designated smoking areas. The employees and businesses in Helena have been hurt. He asked that they grandfather in the ones that were already in business in Helena, and allow 15-year business owners to retain the ability to allow smoking. He compared the present argument to the one of the legendary Hatfield and McCoy family. People forget what the fight was; there is no way to work together, no one wants to settle, and no one wants to negotiate.

### **Opponents' Testimony**

***{Tape: 2; Side: B; Approx. Time Counter: 21.8 - 30}***

**Ward Shanahan, Helena Attorney**, testified as an opponent, and said that he will talk about the principal statute that is intended to be amended by this bill. He said that he is concerned that **REP. MAEDJE** intends to present amendments in Executive Session, and made a formal request to have a hearing on the amendments. Mr. Shanahan said that the amendments seem to make substantial changes in the current bill. He finished his presentation by summarizing his written testimony to the committee in opposition of HB 258.

**EXHIBIT (loh18a06)**

***{Tape: 3; Side: A; Approx. Time Counter: 0 - 7.6}***

**REP. TIM DOWELL, HD 78, KALISPELL** testified as an opponent and said that in 1991 he carried a bill that made all state buildings in Montana smoke-free. He said that, as a result, he has received a lot of favorable comments, and only a few people have said that they miss the smoky environment that they used to have.

**Dr. Richard Sargent, Helena, representing American Cancer Society, as well as Physicians for Prevention**, a statewide group of physicians who are working toward tobacco control, said that this is a fiscally irresponsible bill. Dr. Sargent read and submitted written testimony and Word Perfect documents on CD.

**EXHIBIT (loh18a07)**

Dr. Sargent presented a spreadsheet listing healthcare claims with Helena zip codes which compares total claims from 2001 and 2002. The figures indicate that claims were \$475,000 less for the six months that the No Smoking Ordinance in place.

**EXHIBIT (loh18a08)**

Dr. Sargent presented a technical document for the record.

**EXHIBIT (loh18a09)**

***{Tape: 3; Side: A; Approx. Time Counter: 7.6 - 10.5}***

**Crystal Bridges Calleen, Committee Vice President for Helena Jaycees,** and the mother of a premature baby who is now three. She said that her baby had apnea when she was born, and was on an apnea monitor for the first two years. She explained that apnea episodes are triggered by smoke, even small remnants of residue remaining on the skin or clothing of others. She said that her baby no longer has apnea, but does have asthma, and that when she comes home after being exposed to smoke, she must remove her smoky clothing and take a shower before she can hold her child. She asked the Committee to let local government keep control of smoking ordinances by opposing HB 258.

**Peggy Beltrone, Cascade County Commissioner, and a member of the Great Falls City-County Health Department,** told about an ordinance which the Great Falls Health Board passed. She stated that the Great Falls Health Board is very concerned about maintaining local control of clean indoor air policies, and that they unanimously passed a Resolution of Support for Maintaining Local Control. The Resolution requests preservation of the right of local government to adopt more restrictive measures concerning secondhand smoke. The Resolution was entered into the record.

**EXHIBIT (loh18a10)**

*{Tape: 3; Side: A; Approx. Time Counter: 10.5 - 13.8}*

**Helen Grass, Billings, representing American Cancer Society,** said that ill health brought on by secondhand smoke in the workplace required her to resign from her job at Osco Drug, and prevented her from completing the time required for full vestment with Osco. She said that in this case, the secondhand smoke came from a bar and casino directly across the mall's common area and entered the store where she worked. Written testimony was presented for the record in opposition of HB 258.

**EXHIBIT (loh18a11)**

*{Tape: 3; Side: A; Approx. Time Counter: 14.0 - 20.8}*

**Tim Burton, City Manager of Helena,** said that the City-County Board went through a year-long process of public meetings and hearings, before recommending a Clean Air Ordinance to the City Commission. He said that the Commission went through a six-month process before passing the Ordinance, and that the Ordinance then went to a vote of the people and was upheld by 62%. Both the present and the prior City Commissions feel strongly about supporting the majority vote that took place. Tim Burton said that the City Commission hopes the Legislature will allow this legal election, which was overwhelmingly approved, to stand.

**Jonathan Motl, Attorney, representing the American Heart, American Lung, and American Cancer Associations,** said that he is one of the attorneys defending the Helena Secondhand Smoking Ordinance against litigation filed by bars and casinos. He presented written testimony for the record opposing HB 258.

**EXHIBIT(loh18a12)**

**Ellen Feaver, a Certified Public Account,** spoke on the economic impact of smoking ordinances and pointed out the costs to businesses when smoking is allowed. She presented written testimony for the record in opposition of the bill.

**EXHIBIT(loh18a13)**

*{Tape: 3; Side: A; Approx. Time Counter: 21.0 - 24.0}*

**REP. JILL COHENOUR, HD 51, EAST HELENA,** presented a letter from the Helena Legislative Delegation opposing this legislation.

**EXHIBIT(loh18a14)**

**REP. COHENOUR** referred to studies that refute **REP. MAEDJE's** statements that show that children are better protected by reducing the ability of people to smoke in public places and presented them to enter into the record.

**EXHIBIT(loh18a15)**

**EXHIBIT(loh18a16)**

**EXHIBIT(loh18a17)**

**Verner Bertelsen, representing Montana Senior Citizen's Association,** brought a letter from former **REP. POLLY HOLMES,** author of the Clean Air Bill and said that it would be worthwhile to study the history of this Ordinance. He opposed HB 258.

**EXHIBIT(loh18a18)**

**Dr. Robert Shepard, Helena Physician, also representing Physicians for Prevention,** presented written testimony to the committee and to enter into the record opposing HB 258.

**EXHIBIT(loh18a19)**

**Dr. Shepard** submitted testimony that covers the history of the Helena Clean Indoor Air Ordinance.

**EXHIBIT(loh18a20)**

**Dr. Shepard** presented a short paper on the connection between secondhand smoke and lung cancer.

**EXHIBIT(loh18a21)**

**Dr. Shepard** also presented a position paper from the American Medical Association called PREEMPTION, TAKING THE LOCAL OUT OF TOBACCO CONTROL, which he said is what HB 258 is all about.

**EXHIBIT (loh18a22)**

**Mike Kadas, Mayor of the City of Missoula, and President of the Montana League of Cities and Towns,** expressed concern that not everyone was allowed to speak in opposition at this hearing.

**Dick Paulsen, representing the American Lung Association (ALA),** with 70,000 Montana members of the ALA of the Northern Rockies, stated that Montana law allows children in bars and casinos, and that bars and casinos cater to families and children, as evidenced by their children's menus and high chairs.

**EXHIBIT (loh18a23)**

**Janie McCall, representing the City of Billings and Deaconess Billings Clinic,** said that Billings recognizes self-governing powers and wants those powers to be protected. She said that Deaconess Billings Clinic supports this, because any measure reducing tobacco will save lives.

*{Tape: 3; Side: A; Approx. Time Counter: 24.0 - 26.3}*

**Greg Oliver, representing Missoula City-County Health Department and Tobacco-Free Missoula,** presented written testimony.

**EXHIBIT (loh18a24)**

**Mr. Oliver** presented Resolutions from the Boards of Health of Yellowstone County, Lewis and Clark City-County, (Cascade County Exhibit 10), Missoula City-County, and Gallatin City-County, as well as a letter from Stephanie Nelson, Health Officer, Gallatin City-County Health Department, opposing HB 258.

**EXHIBIT (loh18a25)**

**Mr. Oliver** said that if there had been more time, he would have talked about a study called, "CAN VENTILATION CONTROL SECONDHAND SMOKE IN THE HOSPITALITY INDUSTRY?" The document was presented to enter into the record.

**EXHIBIT (loh18a26)**

**Jessica Freeman, representing a group called Students Advocating Smoke-Free Youth,** urged the Committee to vote against HB 258.

**Sami Butler, registered nurse, representing the Montana Nurses' Association and herself as a Helena citizen,** said that they opposed HB 258, and entered written testimony into the record.

**EXHIBIT (loh18a27)**

**Pat Melby, Helena Citizen, representing the Montana Medical Association,** said that he is one of the 62% of the voters in Helena that enacted this Ordinance. He spoke in opposition.

**Patrick Aberle, representing New West Health Services,** a not-for-profit health service corporation that insures over 30,000 Montanans, said they vigorously oppose this legislation and presented written testimony.

**EXHIBIT (loh18a28)**

**Joe Mazurek, representing the City of Great Falls,** said that the City of Great Falls solved its problem with a local solution. He stated that other communities should be allowed to do the same thing. He said that the City of Great Falls opposes HB 258.

**Lois Fitzpatrick, Helena Citizen,** said that she opposed HB 258 and presented written testimony for the record.

**EXHIBIT (loh18a29)**

**Kelly O'Sullivan, Attorney, State of Montana,** said that she took personal time to come today and oppose HB 258. She presented written testimony for the record.

**EXHIBIT (loh18a30)**

**Steve Kirchhoff, Mayor of the City of Bozeman,** said that the City of Bozeman is opposed to HB 258.

*{Tape: 3; Side: A; Approx. Time Counter: 26.3 - 30}*

**Alec Hansen, League of Cities and Towns,** said that more than 60 cities and towns voted unanimously, in October, in support of a Resolution opposed to any effort to restrict their authority to control smoking.

**Jeri Domme, concerned citizen, who also represents the American Heart Association,** said that the American Heart Association represents 13,000 Montanans and they oppose HB 258. She presented written testimony for the record.

**EXHIBIT (loh18a31)**

**Becky Robideaux, Prevention Specialist for the Adolescent Resource Center, Bozeman,** urged the Committee to say no to Preemption, and to oppose HB 258. She presented written testimony for the record.

**EXHIBIT (loh18a32)**

**Terry Curey, President of Helena's Better Breathers,** said that Helena voters showed a lot of courage to value health above

selected greed and ignorance, and presented written testimony.

**EXHIBIT(loh18a33)**

**Linda Lee, Citizen, speaking in opposition of HB 258**, said that she brought written testimony from **Laura Fox**, a friend whose husband died from second-hand tobacco smoke.

**EXHIBIT(loh18a34)**

**Toni Herrera, Citizen**, said that the 1979 Clean Air Standards were passed as a minimum standard, and that many communities have chosen to make changes to those standards for the benefit of their constituency. He asked for a DO NOT PASS on HB 258, which would allow communities that same ability.

**Teresa Green, concerned Citizen**, urged retention of local government's rights to pass local ordinances protecting their constituents' rights and a vote against HB 258. She presented written testimony for the record.

**EXHIBIT(loh18a35)**

**Dr. William J. Munro, a Board Certified Cardiovascular Surgeon**, said that he has spent a great part of his career taking care of people who have abused tobacco. He said that he is confused when bar owners say that they should have a choice. Dr. Munro said that no one has a choice of whether to harm another human being or not. He presented an article entitled: "Tobacco Scam: Smoke-free Restaurants: Secondhand Smoke - A Little Is Dangerous."

**EXHIBIT(loh18a36)**

**Chris Greco, Bozeman Citizen**, said that he is opposed to HB 258. Written testimony was submitted for the record.

**EXHIBIT(loh18a37)**

**Mike Caplis, Citizen, representing Montana Senior Citizen's Association**, said that he was very opposed to HB 258, as a victim of both first-hand and second-hand smoke. He said that he suffers from a severe heart condition and lung problems.

**Elizabeth Andrews, Helena Citizen**, said that she was submitting written testimony for **Ellen Livers** and several other community members who had to leave. She urged support for allowing local communities to pass important health policies.

**EXHIBIT(loh18a38)**

**Mike Barrett, former town councilman, and poet** submitted written testimony.

**EXHIBIT(loh18a39)**



Testimony which was submitted at the close of the Hearing on HB 258 is as follows:

**Sandy Oitzinger, Helena City Commissioner**, copy of a letter to the INDEPENDENT RECORD, titled "Helenans: Stand By Your Ban".

**EXHIBIT**(loh18a40)

**Mary Sexton, Teton County Commissioner**, letter to the Committee in opposition of HB 258, urging that tobacco taxes be raised.

**EXHIBIT**(loh18a41)

**Lora Wier, RN, Teton County Health Department**, letter to the Committee in opposition of HB 258.

**EXHIBIT**(loh18a42)

**Corlene Martin, Choteau City Commissioner**, letter to the Committee in opposition of HB 258.

**EXHIBIT**(loh18a43)

**Clare Lemke, Livingston Citizen**, letter to the Committee in opposition of HB 258.

**EXHIBIT**(loh18a44)

**Chief Joseph Middle School, Bozeman**, represented by 15 student's signatures on a letter to the Committee opposing HB 258.

**EXHIBIT**(loh18a45)

**Brian Close, Attorney at Law, Bozeman**, letter to the Committee opposing HB 258.

**EXHIBIT**(loh18a46)

**Laurissa Stigen, Citizen, McAllister, Montana**, letter to the Committee opposing HB 258.

**EXHIBIT**(loh18a47)

**Melanie Strandberg, Helena Citizen**, letter to the Committee opposing HB 258.

**EXHIBIT**(loh18a48)

**Patti Steinmuller, Citizen from Gallatin Gateway, Montana**, letter to the Committee opposing HB 258.

**EXHIBIT**(loh18a49)

**Matthew L. Myers, Executive Vice President, Campaign for Tobacco-Free Kids**, statement urging the Legislature to stand up for their citizens and oppose HB 258.

**EXHIBIT**(loh18a50)

**Cliff Christian, Montana Advocacy Director, American Heart Association**, testimony opposing HB 258.

**EXHIBIT**(loh18a51)

**Joseph W. Cherner, President, SmokeFree Educational Services, Inc.**, author of an article copied from the MERCURY NEWS, titled "Smokefree Law Good for Business".

**EXHIBIT**(loh18a52)

**Joseph W. Cherner, President, SmokeFree Educational Services, Inc.**, author of an article titled "Once Enemies, Now Friends."

**EXHIBIT**(loh18a53)

**Joseph W. Cherner, President, SmokeFree Educational Services, Inc.**, author of an article titled: "New York State Restaurant Association Backs Smoking Ban." Excerpts are from THE BUSINESS REVIEW, January 15, 2003.

**EXHIBIT**(loh18a54)

**Montana Democratic Party**, 2002 Platform covering General and Local Government.

**EXHIBIT**(loh18a55)

**Montana Republican Party**, statement on Local Government.

**EXHIBIT**(loh18a56)

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

**REP. MAEDJE** closed by asking for support of HB 258.

**ADJOURNMENT**

Adjournment: 5:30 P.M.

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REP. MARK NOENNIG, Chairman

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LINDA KEIM, Secretary

MN/LK

**EXHIBIT**(loh18aad)